

1-4
DISTRIBUTED

DEC 17 1984

No. 84-707

Supreme Court, U.S.
FILED

DEC 17 1984

ALEXANDER L. STEVAS
CLERK

IN THE SUPREME COURT OF THE

UNITED STATES

October Term, 1984

WILLIE J. DUNN,

Petitioner,

vs.

UNITED STATES OF AMERICA and
PHILIP J. SULLIVAN,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED
STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

Reply Brief

WILLIE J. DUNN
PETITIONER
PRO SE
4028 JUANITA CIRCLE
ROOSEVELT CITY, ALABAMA 35020
(205) 424-1776

BEST AVAILABLE COPY

In the Supreme Court of the United States

October Term, 1984

No. 84-707

Willie J. Dunn,

Petitioner,

vs.

United States of America and
Philip J. Sullivan,

Respondents.

On Petition For A Writ of Certiorari to
The United States Courts of Appeals for
The Eleventh Circuit

Reply Brief

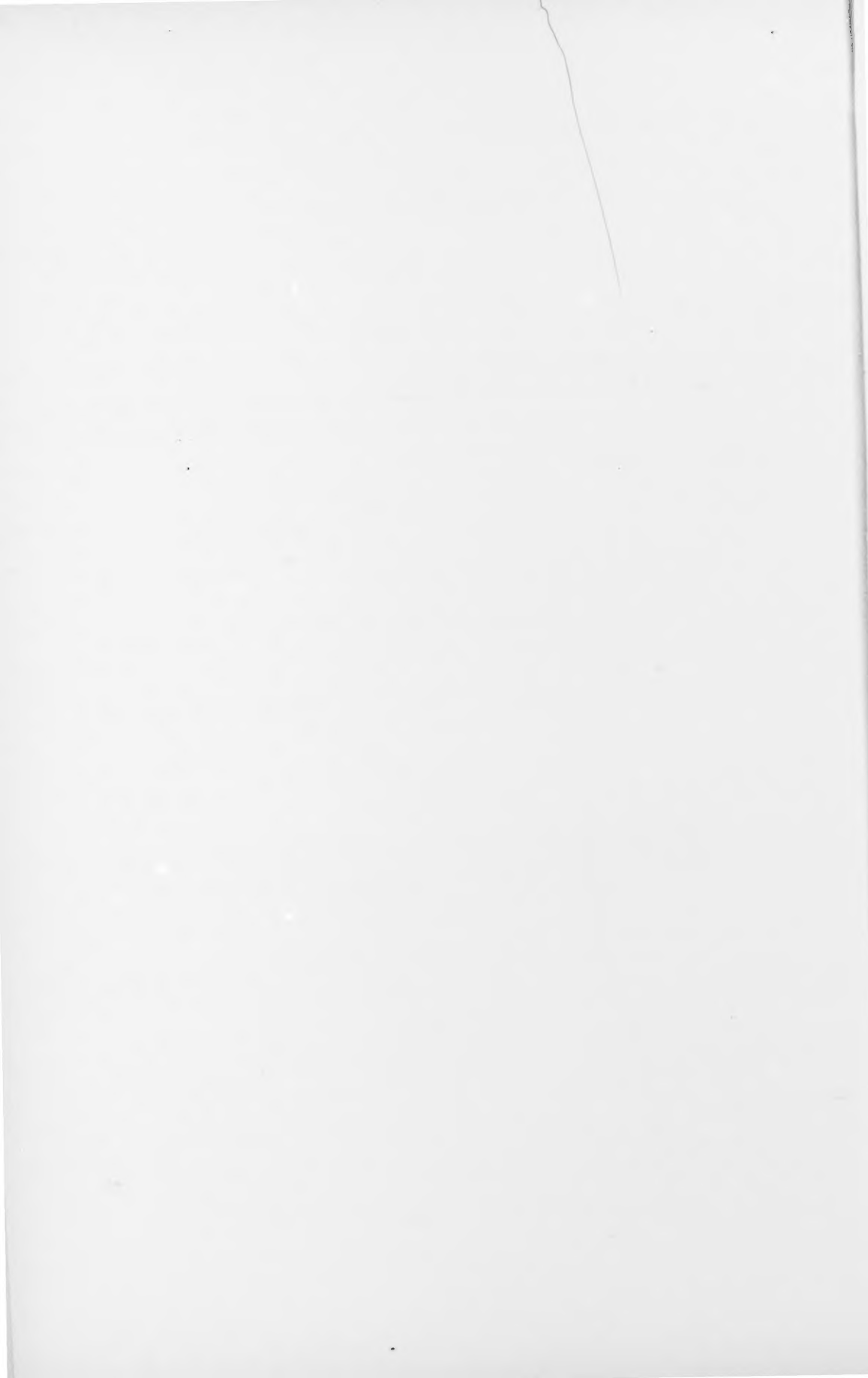


TABLE OF CONTENTS

Table of Contentsi
Table of Authorities	ii-iii-iv
Petitioner's Reply	1-14
Conclusion	15
Certificate of Services	16-17
Appendix	
A - U. S. Postal Receipt	18
B - Article III, Sections 1	19
C - Article III, Section 2	20



TABLE OF AUTHORITIES

<u>Butz v. Economou</u> , 438 U.S. 478; 98 S. Ct. 2894; 57L. Ed. 2d 895.	14
<u>Consolidation Rail Corp. v. Darrone</u> , 104 S.Ct. 1248	12
<u>Crowell v. Benson</u> , 285 U.S. 22, 60 (1932)... 4, 7	
<u>Daniels v. Railroad Co.</u> , 70 U.S. (3 Wall.) 250, 254(1866)	12
<u>Durousseau v. United States</u> , 10 U.S. (6(ranch) 307, (1810)	4,11
<u>The "Francis Wright,"</u> 105 U.S. 381, 385-6 (1881)	3
<u>Gonzalez v. Automatic Employees Credit Union</u> , 419 U.S. 90; 95 S.Ct. 289; 42 L.Ed. 2d 249	11
<u>Goosley v. Osser</u> , 409 U.S. 513; 93 S.Ct. 854; L.Ed. 2d 36	15
<u>Hamberger v. Eastman</u> , 206 A. 2d 239 (N.H. 1964)	10
<u>Heckler v. Ringer</u> , 104 S. Ct. 2013	10
<u>Hishon v. King & Spalding</u> , 104 S. Ct. 2229	9
<u>Idlewild Bon Voyage Liquor Corp. v. Epstein</u> , 370 U.S. 713; 82 S. Ct. 1294; 8 L.Ed. 2d 794	15
<u>Iron Harrow Honor Society v. Heckler</u> , 104 S.Ct. 373	10
<u>Jackson v. Metro. Edison Co.</u> , 419 U.S. 345, 42 L. Ed. 2d 447; 95 S.Ct. 449	14
<u>Katz v. United States</u> , 389 U.S. 347; 19 L.Ed. 2d 576; 88 S.Ct. 507	10



<u>Kline v. Burke Constr. Co.</u> , 260 U.S. 226, 234 (1922)	3
<u>Lynch v. Donnelly</u> , 104 S. Ct. 1355	9
<u>Martin v. Hunter's Lessee</u> , 14 U.S. (1 Wheat) 304, 332 (1816)	3
<u>Moragne v. State Marines Lines, Inc.</u> 398 U.S. 375, 393; 26 L.Ed. 2d 339; 90 S.Ct. 1772	15
<u>MTM Inc. v. Bailey</u> , 420 U.S. 799, (1975)	13
<u>Olmstead v. United States</u> , 277 U.S. 438; 48 S.Ct. 564; 72 L.Ed. 944 (1928)	10
<u>Phillips v. United States</u> , 312 U.S. 246; 61 S.Ct. 480; 85 L. Ed. 800	11
<u>Pierson v. Ray</u> , 386 U.S. 547; 18 L.Ed. 2d 288; 87 S. Ct. 1213	10
<u>Rhodes v. Graham</u> , 37 S.W. 2d 46 (KY. 1931)	10
<u>Schall v. Martin</u> , 104 S.Ct. 2403	9
<u>South Carolina v. Regan</u> , 104 S.Ct. 1107.	12
<u>St. Joseph Stock Yards Co. v. United States</u> , 298 U.S. 38, 84 (1936)	7
<u>Stevenson v. Fain</u> , 195 U.S. 165, 167 (1904).	3

The United States Constitution

Article III, Section 1	2, 11, 19
Article III, Section 2	3, 4, 12, 13, 15, 20
Judiciary Act of September 1789	4, 13
First Amendment	9, 14

Fourth Amendment 9, 14

Fifth Amendment 10, 14

Authorities

Brandeis and Warren, 4 Harv. L.Rev. 193(1890) 9

Hamilton, Alexander, The Federalist List,
No. 78 8, 11

Rules of The Supreme Court

Rule 28.2 1, 2

Petitioner's Reply

The Solicitor General's Memorandum for the United States in Opposition was filed with this Court on November 20, 1984. It alleged that the Petition was untimely filed, pursuant to this Court's Rule 28.2, thereby failing to meet the mandatory jurisdiction requirement, concluding that the writ for certiorari shall be denied because petitioner failed to include with his brief, a notarized statement from a member of the bar of this Court. Petitioner respectfully denies this, and avers:

First, that the petitioner could not have more fully complied with this Court's Rule 28.2, since he is pro se. Petitioner is not a member of the bar of this court. The plain truth is petitioner could not have misrepresented himself before this Court by filing such a notarized statement. Rule 28.2 states:

Rule 28.2. To be timely filed, a document must be received within the time specified for filing, except that any



document shall be deemed timely filed if it has been deposited in a United States post office or mailbox, with first-class postage prepaid, and properly addressed to the Clerk of this Court, within the time allowed for filing...(Underlined for emphasis)

Exhibit B, of petitioner's Motion (Reproduced as Appendix A for the convenience of the Court) clearly shows that the Petition was placed in the U.S. Mail, with First-Class postage, as required by Rule 28.2, on October 1, 1984. Petitioner followed the advice of an Assistant Clerk, who informed him that as long as his Petition was placed in the mail on October 1, 1984, it would be timely filed. The substantive affect of the Solicitor General's Memorandum is that it would manipulate jurisdiction in an effort to deny recognition and judicial enforcement of constitutional rights. This would be against the Constitution, as Article III mandates that:

Section 1. The judicial power of the United States, shall be vested in one supreme court...(See Appendix)



Section 2. The judicial power shall extend to all cases, in Law and Equity, arising under this Constitution, the Laws of the United States...to Controversies to which the United States shall be a Party...between citizens of different states...

In all cases affecting Ambassadors, other public Ministers and Consuls, and those in which a state shall be a Party, the supreme court shall have original Jurisdiction. In all other cases before mentioned, the supreme court shall have appellate Jurisdiction both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make.

From this document, it is clear that Article III contains a grant of appellant jurisdiction to this Court. See Kline v. Burke Constr. Co., 260 U.S. 226, 234(1922); Stevenson v. Fain, 195 U.S. 165, 167 (1904); The "Francis Wright," 105 U.S. 381, 385-386 (1881). The Constitution explicitly authorizes "exceptions" to this Court's appellate jurisdiction. See Martin v. Hunter's Lessee, 14 U.S. (1 Wheat.) 304, 332 (1816) (distinguishing between appellate and original jurisdiction). Beginning with



the Judiciary Act of 1789, Congress has assumed the statutory voice of affirmatively granting this Court jurisdiction. Where the Congress has omitted the grant of jurisdiction, this Court has constructed that omission as subtraction from Article III jurisdiction. See, Durourreau v. United States, 10 U.S. (6(ranch) 307, 314 (1810)). Here, Chief Justice Marshall stated that:

When the first legislature of the union proceeded to carry the third article of the constitution into effect, they must be understood as intending to execute the power they possessed of making exceptions in express terms. They have not declared that the appellate power of the court shall not extend to certain cases; but they have described affirmatively its jurisdiction, and this affirmative description has been understood to imply a negative on the exercise of such appellate power as is not comprehended within it.

In Crowell v. Benson, 285 U.S. 22, 60 (1932), this Court stated that:

...in cases brought to enforce constitutional rights, the judicial power of the United States necessarily extends to the independent determination of all questions, both of fact and law, necessary to the performance of that supreme function.



It is the constitutionality of rights, infringed upon and deprived thereof by agents of the Internal Revenue Services, that jurisdiction is conferred upon this Court. Hence, the above quota of the Supreme Court suggests and indeed implies, that a federal judicial forum is available to hear the petitioner's claims of violations of constitutionally protected rights, as alleged in the Complaint.

The Complaint alleges that agents of the Internal Revenue Service, using vehicles owned and operated by South Central Bell Telephone Company, a public utility, incorporated in the state of Delaware, and whose principle offices are located in Birmingham, Alabama, surveilled and harassed petitioner over a period of seven (7) years, to wit: (1) opened his First-Class mail; (2) interviewed he by posing as employees of the Psychological Corporation and the First National Bank of Birmingham; (3) harassed he at his church, during worship hour; (4) aimed an electronic listening device at he and his

sister; (5) planted electronic listening devices in his automobiles; (6) planted an electronic listening device in his home; (7) called petitioner at his office and told him what he said in his bedroom, to his wife; (8) damaged petitioner's automobile on at least three(3) occasions; (9) planned and executed a scheme which resulted in petitioner wrecking his car in Sylacauga, Alabama; (10) caused he to be injured; (11) called he a "smut;" (12) surveilled and harassed he while attending a professional meeting and associating with colleagues; (13) harassed he while travelling the intra/interstate highways; and (14) infringed upon those liberties petitioner reasonably expected to be secure. The quit-essence of petitioner's claims are that his constitutional rights have been infringed upon and that he has been deprived of constitutionally protected liberties by governmental officials and employees of a state regulated utility company. When Government agents and a utility company's employees, working in unison to infringe

upon recognized rights and simultaneously deprive petitioner of constitutionally protected rights, Congress conferred jurisdiction upon this Court, by which petitioner's claims could be fairly and independently adjudicated. See St. Joseph Stock Yards Co. v. United States, 298 U.S. 38, 84 (1936), (Justice J. Brandeis concurring) ("independent judgment upon the facts" as well as the law is necessary. 298 U.S. at 51-52).

Question raised: Whether it was Congress intent to have petitioner, who invoked the protection of the First, Fourth, and Fifth Amendments, to have to first seek relief in a state court against a public utility, which is regulated by a state regulatory agency, for the protection of constitutionally protected rights?

Justice Brandeis (dissenting opinion) in Crowell v. Benson, 285 U.S. at 87 stated, relative to the question raised, that:

The supremacy of law demands that there shall be opportunity to have some court decide whether an erroneous rule of law was applied....To that extent, the person exerting a right, whatever its source, should be extended to the independent judgment of a court on the ultimate question of constitutionality.



The petitioner avers that the Constitution confers jurisdiction upon this Court vis-à-vis the subject-matter and the specific sets of controversies. The arguments comes down to this: If Congress were to place an unconstitutional limitation upon this Court's jurisdiction, the Court would strike it down, and proceed under its grants of constitutional jurisdiction. Thus, jurisdictional limitations would have to be measured against the Constitution. Here, Alexander Hamilton, writing on the judicial meaning of the Constitution, stated that:

A constitution is, in fact, and must be regarded by the judges as, a fundamental law. It therefore belongs to them to ascertain its meaning as well as the meaning of any particular act proceeding from the legislative body. If there should happen to be an irreconcilable variance between the two, that which has the superior obligation and validity ought, of course, to be preferred; or in other words, the Constitution ought to be preferred to the statute, the intention of the people to the intention of their agents.

The Federalist Papers,
No. 78.



The First Amendment guarantees petitioner the right to religious freedom, the right to petition the Government, the right to attend professional meetings, and the right to associate with colleagues, free of harassment and surveillance by South Central Bell Telephone Company and agents of the Internal Revenue Service. The interference of First Amendment rights have clearly been shown to have occurred as a result of South Central Bell Telephone Company and agents of the Internal Revenue Service, actions. The practice of religious freedom, the right to petition the Government, the right to attend professional meetings and associate with colleagues are so rooted in traditions and the consciousness of the American people, that these guarantees are considered to be fundamental rights. See Lynch v. Donnelly, 104 S.Ct. 1355; Hishon v. King & Spalding, 104 S.Ct. 2229; Schall v. Martin, 104 S.Ct. 2403.

The Fourth Amendment guarantees petitioner "the right to be let alone" (See Brandeis and Warren in 4 Harv. L. Rev. 193, (1890) and

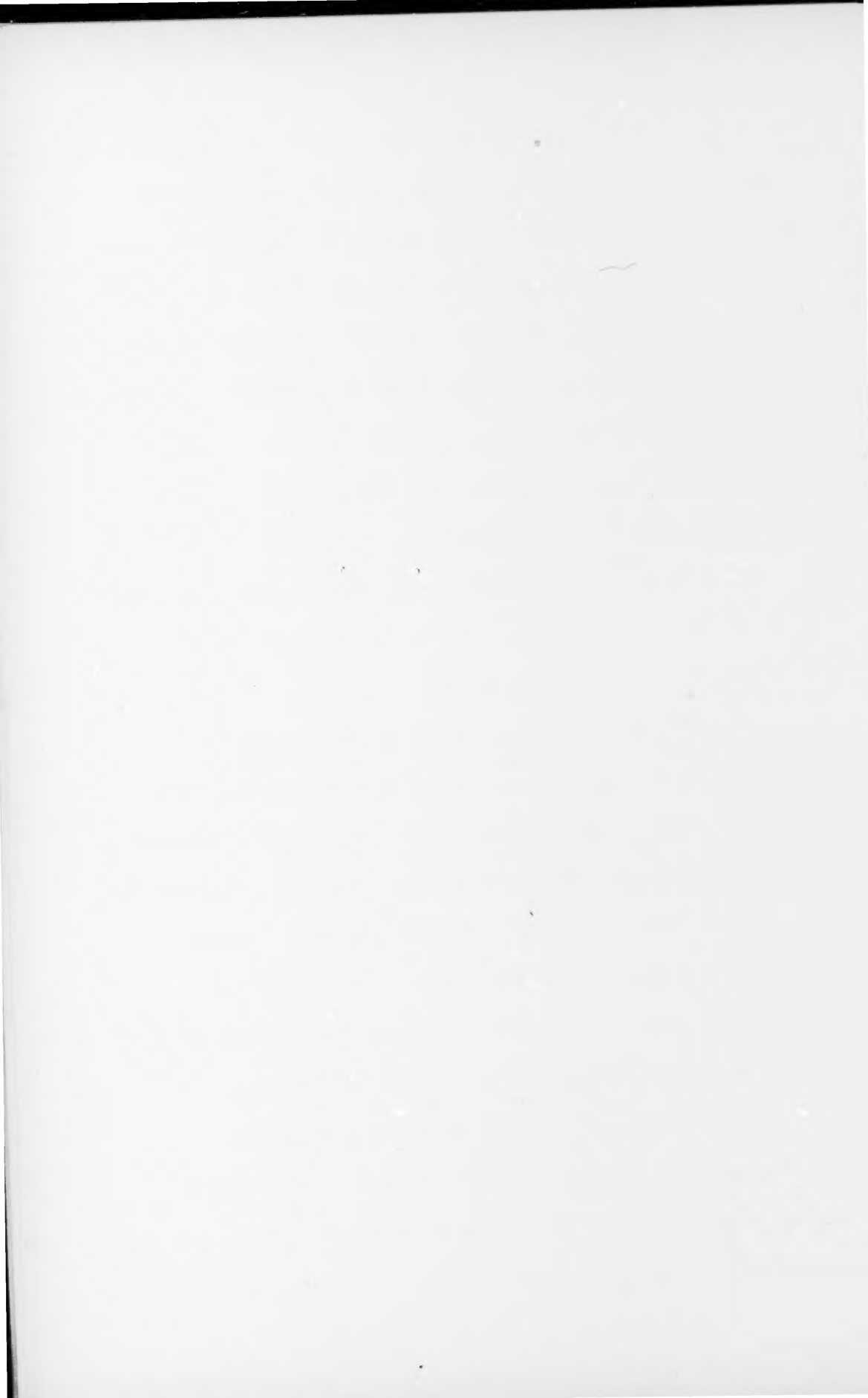


the right to be secure in his "persons, houses, papers and effects," against electronic surveillance of petitioner. See, Katz v. United States, 389 U.S. 347, 19 L.Ed. 2d 576, 88 S.Ct. 507; Rhodes v. Graham, 37 S.W. 2d 46 (Ky. 1931); Hamberger v. Eastman, 206 A.2d 239 (N.H. 1964), and against damages to his personal property. See Pierson v. Ray, 386 U.S. 547; 18 L.Ed. 2d 288; 87 S. Ct. 1213.

Mr. Justice Brandeis, dissenting in Olmstead v. United States, 277 U.S. 438; 48 S.Ct. 564; 72 L.Ed. 944 (1928) stated:

Experience should teach us to be most on our guard to protect liberty when the government's purposes are beneficent.

The Due Process Clause of the Fifth Amendment guarantees petitioner the right to travel intra and interstate highways, free of surveillance and harassment by South Central Bell Telephone and agents of the Internal Revenue Service. The affidavits of the petitioner (R-III-587-620, 637-648) show "good cause" for this action. Therefore, jurisdiction arises under the laws of the United States. See Heckler v. Renger, 104 S. Ct. 2013; Iron



Harrow Honor Society v. Heckler, 104 S.Ct. 373.

These are compelling arguments which favor the survival of jurisdiction of the Petition.

In fact, it is a dire effort to save appellant's remedy. See Phillips v. United States, 312 U.S. 246; 61 S.Ct. 480; 85 L.Ed.800; Gonzalez v. Automatic Employees Credit Union, 419 U.S. 90; 95 S.Ct. 289, 42 L.Ed. 2d 249.

Coupled with the canons of Alexander Hamilton, Article III, Section 2 of the Constitution, and this Court's in Durousseau v. United States, 10 U.S. (6Cranch) at 314, petitioner finds absolutely no clear indication that this Court lacks jurisdiction, therefore, absent of any such indication, petitioner respectfully avers that Congress intended for this Court to have jurisdiction over the subject-matter, with regard to deciding the constitutionality of acts perpetrated against petitioner by federal Government entities and publicly owned utility.



Secondly, the view that Article III, Section 2, limits the jurisdiction of this Court to cases arising under the Constitution, vis-à-vis "appellate Jurisdiction, both as to Law and Fact," has particular import for this case, by virtue of its subject-matter. Thus, the petitioner's jurisdictional arguments are that: (1) this case arises under the laws of the United States; (2) it meets the controversy requirements (See Consolidation Rail Corp. v. Darrone, 104 S.Ct. 1248); (3) the Complaint sought injunctive relief; (4) there are remedies (both constitutional and statutory provisions) for wrongful acts perpetrated against the petitioner (See South Carolina v. Regan, 104 S.Ct. 1107). These are the bases upon which petitioner avers that this Court has jurisdiction.

In Daniels v. Railroad Co., 70 U.S. (3 Wall.) 250, 254 (1866), the Supreme Court stated that:

...it is for Congress to determine how far, within the limits of the capacity of this court to take, appellate jurisdiction shall be given, and when conferred, it can be exercised only to the extent and in the manner prescribed by law.

Given the premise that Congress has conferred jurisdiction upon this Court by virtue of the subject-matter of this case; the Judiciary Act of September 24, 1789; and Article III, Section 2 of the Constitution, petitioner avers that it was not Congress' intent to relatively remove federal jurisdiction to achieve unconstitutional substantive ends; namely, to deny petitioner his constitutional rights.

Finally, petitioner respectfully says that he recognizes the importance of mandatory jurisdiction, but avers that this Court's discretionary jurisdiction would be more applicable, (See MTM, Inc, v. Baxley, 420 U.S. 799 (1975) as this case raises several questions at constitutional law, to wit:

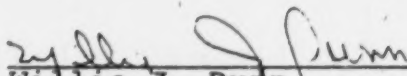


1. Whether the First Amendment gives petitioner the right to petition the Government such that he had a constitutional right to worship free of being harassed during worship hours by two(2) Internal Revenue Service agents?
2. Whether the Fourth Amendment protects petitioner from illegal electronic surveillance, by agents of the Internal Revenue Service, at his home and in his cars?
3. Whether under Jackson v. Metropolitan Edison Co., 419 U.S. 345; 42L.Ed.2d 447; 95 S.Ct. 449, petitioner, who invoked the protection of the First, Fourth, and Fifth Amendments, must first seek relief in a state court against a public utility company?
4. Whether under the doctrine of respondent superior, Philip J. Sullivan, the District Director of Internal Revenue Service, Birmingham, Alabama, may not be held liable for the acts of his agents who infringed upon and deprived petitioner of constitutional rights, damaged his personal property, and caused him personal injuries, under Butz v. Economou, 438 U.S. 478, 98 S. Ct. 2894; 57 L.Ed. 2d 895(1978)?
5. Whether it was congressional intent to preclude the judicial allowance of a remedy for conduct of IRS agents manifestly beyond their authority?
6. Whether petitioner has no claims for money damages against the United States?



These are substantial constitutional questions. See Goosley v. Osser, 409 U.S. 513; 93 S.Ct. 854; L.Ed. 2d36. And the Complaint formed a basis for equitable relief. See Idlewild Bon Voyage Liquor Corp. v. Epstein, 370 U.S. 713; 82 S.Ct. 1294; 8L.Ed. 2d 794.

In conclusion, petitioner avers that this Court should grant he his writ of certiorari for the reasons cited. It would be unjust to deny petitioner remedy, as Congress, in its enactment of Article III, Section 2 meant to leave intact, some judicial forum capable of providing constitutionally adequate remedies for constitutional wrongs. Otherwise, petitioner will be left without adequate remedy. See, Moragne v. States Marines Lines, Inc. 398 U.S. 375, 393; 26 L.Ed.2d339; 90 S.Ct. 1772.



Willie J. Dunn
Petitioner
Pro se
4028 Juanita Circle
Roosevelt City, Alabama 35020
(205) 424-1776

No. 85-707

IN THE SUPREME COURT OF THE
UNITED STATES

Willie J. Dunn,

Petitioner,

vs.

United States of America and
Philip J. Sullivan,

Respondents.

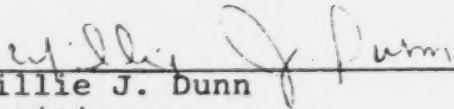
ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF
APPEALS FOR THE ELEVENTH CIRCUIT

CERTIFICATE OF SERVICE

This is to certify that the parties listed below have been served with petitioner's Reply, by depositing the same in the U.S. Mail, with First-Class postage prepaid on December
14, 1984, and addressed to: Mr.
Arrin K. Ames, Attorney for South Central Bell



Telephone Company, 3196 Highway 280-S, Room
304N, Birmingham, Alabama 35243, and Mr. Rex
Lee, Solicitor General, Department of Justice,
Washington, D.C. 20530.



Willie J. Dunn

Petitioner

Pro Se

4028 Juanita Circle

Roosevelt City, Alabama 35020

(205) 424-1776



APPENDIX

A - U.S. Postal Receipt

110	14.55	PMTR
110	3.42	PMTR
110	2.56	PMTR
110	1.39	PMTR

10	1	1964	DATE
\$	21.92	TOTAL	

21.92	RECT
0.00	C H
.....	





B - Article III, Section I

Article III reads in part:

SECTION 1. The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behaviour, and shall, at stated Times, receive for their Services a Compensation, which shall not be diminished during their Continuance in Office.



C - Article III, Section 2

SECTION 2. The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority; - to all Cases of admiralty and maritime Jurisdiction; - to Controversies to which the United States shall be a Party; - to Controversies between two or more States; - between a State and Citizens of another State; - between Citizens of different States; - between Citizens of the same State claiming Lands under the Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be a Party, the supreme Court shall have original Jurisdiction. In all the other Cases before mentioned, the supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make.